

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESEVALU
WA.Nos.751 & 753 of 2020
and
CMP.Nos.9940, 9942 & 9945 of 2020

1. The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
 2. The Joint Commissioner,
Religious & Charitable Endowment Administration
Department,
Dr.Nangappa Road,
Coimbatore.
- ... Appellants in both WAs

vs.

1. G.K.Subashchandiran
 2. The Executive Officer,
Arulmigu Raja Koil, Thenmugam,
Vellode Village, Perundurai Taluk,
Erode District.
 3. Thenmugam Vellodu Sathanthaikulam,
Rajaswamy Narpani Mandram rep.by its Secretary,
Thenmugam Vellodu Village,
Perundurai Taluk, Erode District.
- ... Respondents in WA.No.751 of 2020
1. V.Palanisamy
 2. K.Subramaniam
 3. D.Saravanan
 4. The Executive Officer,
Arulmigu Raja Koil, Thenmugam,
Vellode Village, Perundurai Taluk,
Erode District.
 5. Archaeological Survey of India,
Chennai Circle, Fort St. George,
Chennai - 600 009.

6. The State of Tamilnadu,
Rep.by its Inspector of Police,
Idol Wing CID, IGPS Special Camp,
Trichy.

7. Rangarajan Narasimhan

8. V.N.Doraiswamy

9. K.C.Sivasubramani

10.Muthukumararaja ... Respondents in WA.No.753 of 2020

Writ Appeals filed under Clause 15 of the Letter Patent against the common order dated 20.03.2020 passed by the learned Single Judge in W.P.Nos.3962 and 21474 of 2019 respectively.

Prayer in WP.No. 3962 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 3 to appoint a non hereditary trustees as per scheme decree dated 21.05.1991 for the above temple namely " Arulmigu Raja Koil" along with new Temple situated at Thenmugam Vellodu Village Perundurai Taluk, Erode District.

Prayer in WP.No.21474 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondent herein to grant permission for the installation of idols lying in a room in Arulmighu Raja Koil Thenmugham Vellode Village, Perundurai Taluk, Erode District which were stolen and eventually recovered within a strict time frame fixed by this Honourable Court.

For Appellants : Mr.P.H.Arvind Pandian, AAG
in both WAs assisted by Mr.M.Karthikeyan
SGP (HR&CE)

For Respondents : Mr.T.N.Rajagopalan (R1)
in WA.No.751 of 2020 Mr.K.Ashok Kumar (R2)

For Respondents : Mr.T.S.Vijaya Ragavan (R1 to R3)
in WA.No.753 of 2020 Mr.K.Ashok Kumar (R4)
Mr.Karthikeyan, ASG (R5)
Party -in-person (R7)

COMMON JUDGMENT

As per the administrative order of the Hon'ble Chief Justice dated 23.09.2020, the present two writ appeals were heard by this Court through Video Conference and are decided by this common judgment.

2.The present intra Court appeals arise from the interim

order dated 20.03.2020 passed by the learned Single Judge in WP.Nos.21474 and 3962 of 2019, wherein, at paragraph nos.10 to 12, it was observed as under:

"10.Mr.T.S.Vijayaraghavan, learned counsel for the petitioner in the present Writ Petitions states that he has entered appearance for both the Agama Experts in W.P.No.574 of 2015. However, all parties confirm that W.P.No.574 of 2015 has not been listed for hearing after 22.06.2018. The Expert Committee, in my view, stands dismantled as on 22.06.2018, or, at best, kept in abeyance till such time there was clarity on the members/constituents. Evidently, since two Agama experts had been provided for in the Committee, as originally constituted, no valid meeting of the Committee can be conducted without their presence or rather, in their absence. The Expert Committee specifically constituted by the First Bench comprised of seven members including the two Agama Experts and their presence, as the presence of the remaining five members, is thus mandatory.

11.Since the meeting of the Committee on 10.09.2018 (in the present case) has admittedly been conducted in the absence of the two Agama Experts, the Committee itself, and the meetings conducted under the auspices of such an incomplete Committee, is, in my view, grossly irregular. All proceedings held by the so-called Committee, post 22.06.2018 are, in my view, irregular and to stand disavowed.

12.List on 26.03.2020 at the end of motion list solely to await Memo containing the agreed list of members including structural engineer to undertake the structural assessment of the Temple in question and file a detailed report on 'essential works', if any, required to be carried out to in the Temple prior to reconsecration and commencement of daily pooja."

3.Heard the learned Additional Advocate General assisted by the learned Special Government Pleader (HR&CE) appearing for the appellants, who submitted that the writ petitions pending before the learned Single Judge, are relating to appointment of a non-hereditary trustee as per the Scheme decree and installation of idols in Arulmigu Rasa Koil, situated at Thenmugham Vellode Village, Perundurai Taluk, Erode District. However, the learned Single Judge passed the interim order dated 20.03.2020 which is impugned herein, with regard to the Expert Committee appointed by this Division Bench in WP.No.574 of 2015 pertaining to the Constitution of Heritage Committee for conservation and renovation of the Historical monuments and temples, which is still pending before this Division Bench. He further submitted that as per the direction of this Court, the Expert Committee is

functioning for the purpose of carrying out the essential works in the temples of Tamil Nadu; and WMP.Nos.16006 of 2018 and 13991 of 2020 in WP.No.574 of 2015 were already filed to restructure the said Committee for want of Agama Experts. Thus, according to the learned Additional Advocate General, the order impugned herein is liable to be set aside, as it is unwarranted.

4.This Court has also heard the learned counsel appearing for the contesting respondents as well as the seventh respondent in WA.No.753 of 2020 as party in person and perused the materials available on record, including the affidavits, counter and rejoinder filed by the respective parties.

5.At the outset, the reliefs sought in the respective writ petitions, are as follows:

WP.No.3962 of 2019:

To issue a writ of Mandamus directing the respondents 1 and 3 to appoint a non-hereditary trustees as per Scheme decree dated 21.05.1991 for the above temple namely "Arulmigu Raja Koil" along with new temple situated at Thenmugam Vellodu Village, Perundurai Taluk, Erode District.

WP.No.21474 of 2019:

To issue a writ of mandamus directing the respondents herein to grant permission for the installation of idols lying in a room in Arulmighu Rasa Koil, Thenmugham Vellode Village, Perundurai Taluk, Erode District, which were stolen and eventually recovered, within a strict time frame fixed by this Court.

6.The subject matter in issue has already been seized of by this Division Bench and elaborate arguments having been taken place in Suo Motu WP.No.574 of 2015, relating to Constitution of Heritage Commission for conservation and renovation of the historical monuments and temples. As such, the learned Single Judge, while considering the relief sought in the writ petitions, could have directed the parties to make a mention before this Division Bench for necessary orders, as regards the functioning of the Expert Committee appointed by this Division Bench. Now, this Court, by order dated 04.12.2020, in WMP.Nos.16006 of 2018 and 13991 of 2020 in WP.No.574 of 2015, has reconstituted the Expert Committee for the purpose of works to be carried on in all the temples of Tamil Nadu and issued necessary directions for smooth and effective functioning of the same. The relevant portion of the said order is profitably reproduced hereunder:

"15.Taking into consideration the factors already noted above and keeping the totality of the circumstances in mind, this Court deems it just and necessary to

reconstitute the Expert Committee, so as to effectively function and carry out the task assigned to it. Accordingly, the Committee is reconstituted with the following members:-

Sl. No.	Designation	Name
(i)	Structural Engineering Expert	Dr. Arun Menon, Assistant Professor, Structural Engineering Lab, IIT
(ii)	Archaeological Expert	Tmt. Maheswari, Regional Director (South)
(iii)	Conservation Expert	Thiru. Sathyamoorthy
(iv)	Traditional Sthapathi	Thiru K.Dakshinamoorthy
(v)	Agama Experts Saiva Agamas:- Vainava Agamas:-	(i) Dr. Sivasri K. Pitchai Gurukkal, Sri Karpaga Vinayagar Temple, Pillaiyarpatti, Sivaganga District. (ii) Thiru. K. Chandrasekara Battar (Raja Battar), No. 66, Sannathi Street, Tiruparankundram, Madurai - 625 005. (iii) Thiru. Anantha Shayana Battachariyar, No. 8, South Mada Street, Mahabalipuram. (iv) Thiru. T. Govintharaja Battar, No. 33/39, Sannathi Street, Thirukkurungudi, Nanguneri Taluk, Tirunelveli District.
(vi)	Member Secretary	Additional Commissioner (Thiruppani), HR&CE Department

16. That apart, this Court is inclined to issue the following directions to the Expert Committee:-

(i) The HR&CE Department shall formulate procedure for convening the meetings of the Expert Committee, with the convenience of its members and circulate the required papers with Agenda, well in advance.

(ii) The members of the Committee shall start functioning immediately and decide the pending cases at the earliest possible time and communicate the same to

the concerned parties.

(iii) The Committee shall consider all the required details of Agama, Samitha structural stability, historical aspects and archaeological nature for approving the works proposed.

(iv) All the members shall co-operate and co-ordinate among themselves and with the HR&CE Department, for smooth and effective functioning of the Committee.

(v) The Committee meetings shall not be postponed unnecessarily and the cases shall be taken up on the basis of their nature and urgency.

(vi) In the unavoidable circumstances, the opinion of two Agama Experts out of four (one from Saiva Agama Expert and another from Vaishnava Agama Expert) is sufficient for disposal of the cases, where the opinion of the Agama Experts is essential.

(vii) The members shall have necessary consultation/cross check with the religious scriptures before expressing any opinion in respect of every temple along with the details relating to the petitioning temples.

(viii) A detailed questionnaire, to be filled up by the petitioning temples, shall be placed before the Expert Committee well in advance before the day fixed for meetings for deliberations, so that the 'Agama perspective' can be considered.

(ix) The participation of the stakeholders / representative of the petitioning temples, if required, shall be decided by the Committee.

(x) The HR&CE Department shall take care of the transport facilities to the members of the Committee.

(xi) While taking decision, the Committee shall ensure the protection and preservation of the monuments and ancient temples and their heritage and make proper deliberation in this regard.

(xii) The decision of the Committee shall be final and binding on the parties.

(xiii) If there is any grievance, it is always open to the members of the Committee / HR&CE Department to approach this Court with necessary petition/memo for appropriate orders.

However, this order is subject to the final order to be passed in the main writ petition in W.P. No. 574 of 2015."

7. Such being the present state of affairs, this Court is of the opinion that the order dated 20.03.2020 passed in WP.Nos.3962 and 21474 of 2019 which is impugned herein, does not survive. Both the writ appeals are accordingly, disposed of. It is open to the parties to work their remedy with respect to the

subject temple, in the main writ petitions. No costs.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ps/rk

To

1. The Executive Officer,
Arulmigu Raja Koil, Thenmugam,
Vellode Village, Perundurai Taluk,
Erode District.
2. Archaeological Survey of India,
Chennai Circle, Fort St. George, Chennai - 600 009.
3. The Inspector of Police,
Idol Wing CID, IGPS Special Camp,
Trichy.
4. The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
5. The Joint Commissioner,
Religious & Charitable Endowment Administration
Department,
Dr.Nangappa Road,
Coimbatore.

+1cc to the Government Pleader, S.R.No. 39421

WA.Nos.751 & 753 of 2020
and CMP.Nos.9940, 9942 & 9945 of 2020

BP(CO)
GN(09/04/2021)